

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION**

Cabela's, Inc.,

Cabela's Ventures, Inc.,  
Appellants,

v.

Cheyenne County Board of Equalization,  
Appellee.

Case Nos: 18C 0153 & 18C 0154

Case No. 18C 0159

Decision and Order Reversing the  
Determinations of the Cheyenne County  
Board of Equalization

**For the Appellant:**

Max L. Rodenburg,  
Brian S. Kruse,  
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**For the Appellee:**

Paul B. Schaub,  
Deputy Cheyenne County Attorney

These appeals were heard before Commissioners Robert W. Hotz and James D. Kuhn.

**I. THE SUBJECT PROPERTY**

The Subject Property in these appeals is three commercial parcels located in Cheyenne County, Nebraska. The parcels in 18C 0553 and 18C 0554 are directly adjacent to one another and represented the largest improvements to Cabela's planned campus in Sidney, Nebraska. The parcel in 18C 0553 (One Cabela Drive) is a 39.83 acre lot improved with a 301,272 square foot office building, with 230,232 square feet of lighted, paved parking space and a 1,512 square foot outbuilding.<sup>1</sup> The parcel in 18C 0554 (Two Cabela Drive) is a 28.44 acre lot improved with a 171,972 square foot office building, with 192,920 square feet of paved, lighted parking area and a 3,115 square foot solid wall porch connecting the buildings on the two parcels.<sup>2</sup> The parcel in 18C 0559 (638 Illinois Street) is a 3.98 acre lot located in a different area of Sidney.<sup>3</sup> It is improved with a 71,937 square foot office building and storage warehouse with 42,050 square feet of lighted parking space. The legal descriptions and property record cards for the Subject Property are found at Exhibits 16:114, 17:116 and 22:127.

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<sup>1</sup> Exhibit 16:114-127. The record contains some disagreements and conflicting information about the dimensions of the buildings and lots involved. The figures reflected on the County's Property Record Cards (Exhibit 16:114, Exhibit 17:116, and Exhibit 22:127 & 131) are used here for the purpose of identifying the Subject Property. Where the disputes were material to the valuation of the Subject Property, they are discussed below.

<sup>2</sup> Exhibit 17:116-122.

<sup>3</sup> Exhibit 22:127-136.

## II. PROCEDURAL HISTORY

The Cheyenne County Assessor (the County Assessor) determined that the assessed value of the Subject Property in Case No. 18C 0153 was \$15,336,807 for tax year 2018. Cabela's, Inc. (Cabela's) protested this assessment to the Cheyenne County Board of Equalization (the County Board) and requested an assessed valuation of \$12,139,200. The County Board determined that the taxable value of the Subject Property for tax year 2018 was \$15,336,807.<sup>4</sup>

The County Assessor determined that the assessed value of the Subject Property in Case No. 18C 0154 was \$17,619,811 for tax year 2018. Cabela's protested this assessment to the County Board and requested an assessed valuation of \$10,318,320. The County Board determined that the taxable value of the Subject Property for tax year 2018 was \$17,619,811.<sup>5</sup>

The County Assessor determined that the assessed value of the Subject Property in Case No. 18C 0159 was \$3,505,576. Cabela's Ventures, Inc., protested this assessment to the County Board and requested an assessed valuation of \$1,798,425. The County Board determined that the taxable value of the Subject Property for tax year 2018 was \$3,505,576.<sup>6</sup>

For tax year 2018, Cabela's, Cabela's Ventures, Inc., and several associated business organizations appealed a total of 103 decisions of the County Board, including the three decisions described above, to the Tax Equalization and Review Commission.<sup>7</sup> The Commission held a hearing on the three appeals captioned above on November 12, 2019, with Commissioner Hotz presiding. Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. Exhibits 1, 2, 7, 16, 17, 22, 24, 28, 31, 32, and 35 were received, and Exhibit 38 was not received for the reasons described on the record.<sup>8</sup>

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<sup>4</sup> Exhibit 1.

<sup>5</sup> Exhibit 2.

<sup>6</sup> Exhibit 7.

<sup>7</sup> Ninety-nine of these cases have been resolved by dismissal or by Confession of Judgment. See 442 Neb. Admin. Code, Ch. 4 § 003 (2011). The remaining appeal for tax year 2018 involved real property of the residential class and will be addressed in a different final order.

<sup>8</sup> The three appeals addressed in this order had been consolidated with several cases that were resolved shortly before the hearing, which resulted in many exhibits being exchanged by the parties and numbered by the Commission but not offered at the hearing.

### III. STANDARD OF REVIEW

The Commission's review of the determination by a county board of equalization is de novo.<sup>9</sup> When the Commission considers an appeal of a decision of a county board of equalization, a presumption exists that the board has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action.<sup>10</sup>

That presumption remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.<sup>11</sup>

The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.<sup>12</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>13</sup>

A taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.<sup>14</sup> The county board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the county board's valuation was unreasonable or arbitrary.<sup>15</sup>

The Commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.<sup>16</sup> The Commission may also take notice of judicially cognizable facts, and general, technical, or scientific facts within its specialized knowledge, and it may utilize its experience, technical competence, and specialized knowledge in the evaluation

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<sup>9</sup> Neb. Rev. Stat. § 77-5016(8) (Reissue 2018), *Brenner v. Banner County Bd. Of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008). "When an appeal is conducted as a 'trial de novo,' as opposed to a 'trial de novo on the record,' it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal." *Koch v. Cedar County Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

<sup>10</sup> *Brenner* at 283, 811 (Citations omitted).

<sup>11</sup> *Id.*

<sup>12</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

<sup>13</sup> *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>14</sup> Cf. *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. Of Equal. of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

<sup>15</sup> *Bottorf v. Clay County Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

<sup>16</sup> Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

of the evidence presented to it.<sup>17</sup> The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>18</sup>

## VALUATION

### A. Law

Under Nebraska law,

Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm's length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.<sup>19</sup>

Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in Neb. Rev. Stat. § 77-1371, (2) income approach, and (3) cost approach.<sup>20</sup> Actual value, market value, and fair market value mean exactly the same thing.<sup>21</sup> Taxable value is the percentage of actual value subject to taxation as directed by Neb. Rev. Stat. § 77-201 and has the same meaning as assessed value.<sup>22</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>23</sup> All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.<sup>24</sup>

### B. Summary of the Evidence

To frame the issue of the valuation of the Subject Property, we find facts about underlying economic events in accordance with the Property Tax Administrator's Reports & Opinions:

Sidney was home to one of Nebraska's largest employers Cabela's, the World's Foremost Outfitter of hunting, fishing and outdoor gear. However, in September 2017, Cabela's was sold to competitor Bass Pro Shops. This has caused a total restructuring of the local operation due to Bass Pro Shops decision to initiate a buy-out for a large number of Cabela's management, coupled with the voluntary move of others. The office buildings that comprise the Cabela's campus are still awaiting

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<sup>17</sup> Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

<sup>18</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

<sup>19</sup> Neb. Rev. Stat. § 77-112 (Reissue 2018).

<sup>20</sup> *Id.*

<sup>21</sup> *Omaha Country Club* at 180, 829 (2002).

<sup>22</sup> Neb. Rev. Stat. § 77-131 (Reissue 2018).

<sup>23</sup> Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

<sup>24</sup> Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

final disposition from the new owner. Needless to say, a once local corporation that employed approximately 2,000 Cheyenne County residents (slightly more than 42% of total employment in Sidney) has through its sale caused economic uncertainty for the entire county.<sup>25</sup>

The issue in dispute between the parties is the actual value of the three parcels of the Subject Property, two of which comprised the core of the Cabela's corporate campus and the third of which was another combination office/warehouse used by Cabela's. For each parcel, Cabela's presented a USPAP-compliant appraisal report and supporting testimony from the appraiser, Gary Brandt. Brandt has been a real estate appraiser since 1975 and a certified general appraiser since 1992; he has extensive experience appraising commercial properties in central and western Nebraska.<sup>26</sup> Brandt personally inspected each parcel of the Subject Property while developing the appraisal reports.

#### One Cabela Drive

One Cabela Drive and Two Cabela Drive are the parcels located on the planned Cabela's campus, south of the Sidney city center.<sup>27</sup> Brandt determined that One Cabela Drive had an effective age of 18 to 20 years, a condition rating of average, a quality rating of Class C (average to good with emphasis toward average), and average maintenance.<sup>28</sup> He determined that the building was 242,996 ± square feet<sup>29</sup> above grade and 54,449 ± square feet below grade. He calculated the amount of parking area at 193,000 ± square feet.<sup>30</sup> Under the heading of "Hypothetical Condition," Brandt noted that the parcel contained a 59-space RV park that had not been included in the parcel at the request of Cabela's.<sup>31</sup>

Brandt determined that, if the land were vacant, development of the site for commercial use would not be financially feasible due to market instability and lack of demand for commercial development, and the maximally productive use would be for it to remain vacant.<sup>32</sup> However,

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<sup>25</sup> 2018 Reports and Opinions of the Property Tax Administrator, Cheyenne County, page 8. The Commission may consider and utilize the Reports and Opinions during the course of any hearing or proceeding or as part of its decision making process. 442 Neb. Admin. Code, Ch. 5 § 031.02 (2011).

<sup>26</sup> See Exhibit 31:71-72 for a full list of Brandt's qualifications.

<sup>27</sup> Exhibit 31:7.

<sup>28</sup> Exhibit 31:22.

<sup>29</sup> The ± symbol, as used in the field of real property appraisal, means "more or less." This symbol was used frequently in Brandt's appraisal reports, and we have used it here for consistency with the evidence provided.

<sup>30</sup> The county's records contain two line items for concrete paving for the Subject Property, one being 194,232 square feet and the other being 36,000 square feet. Compare Exhibit 16:126 with Exhibit 31:23.

<sup>31</sup> Exhibit 31:34.

<sup>32</sup> Exhibit 31:38.

since the improvements already exist, and the land value does not exceed the total value of the property as improved, the highest and best use as improved is as an office building.<sup>33</sup>

Brandt used the sales comparison approach to value in completing his appraisal. No comparable sales had occurred in Sidney or Cheyenne County, but he identified sales of five comparable properties in other markets.<sup>34</sup> Improved Sale #1 is located in Scottsbluff, Nebraska; Improved Sale #2 is located in Colorado Springs, Colorado; Improved Sale #3 is located in Bellevue, Nebraska; Improved Sale #4 is located in Fishers, Indiana; and Improved Sale #5 is located in Scottsbluff, Nebraska. The buildings sold were all office or office/warehouse combinations, built between 1999 and 2007, in average, good, or average-to-good condition, and ranging from 101,755 square feet to 193,000 square feet.<sup>35</sup> These buildings had per-square-foot sale prices of \$60.20 (#1), \$47.17 (#2), \$73.52 (#3), \$46.63 (#4), and \$26.18 (#5).<sup>36</sup> Brandt found that Sale #1, Sale #3, and Sale #5<sup>37</sup> were “not affected by the very slow real estate market and required a downward adjustment for market conditions.”<sup>38</sup> Brandt applied a downward adjustment of 20% to these three sales for market conditions. Brandt also found that Sale #2 and Sale #4 were vacant or had high vacancy rates; he applied a small upward adjustment to each of these properties. Brandt made additional adjustments for location, size, condition, quality, and age, ultimately concluding that the sales comparison approach indicated a market value for One Cabela Drive of \$32.25 per square foot, a total of \$9,593,000.<sup>39</sup>

Brandt also employed a cost approach in determining his opinion of value.<sup>40</sup> To calculate the land value used in his cost approach, Brandt identified sales of four vacant parcels with similar qualities to the land component of One Cabela Drive.<sup>41</sup> Two of these parcels were located in Sidney, Nebraska; one was located in Scottsbluff County, Nebraska; and one was located in Ogallala, Nebraska. Brandt applied adjustments to the per-acre price of these comparable lots for Time/Condition of Sale/Market Conditions, Location, Size, and Site Prep[aration]. Notably, each

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<sup>33</sup> Id.

<sup>34</sup> See Exhibit 31:52-62.

<sup>35</sup> Id. Thus, the largest of the comparable buildings was 108,272 square feet smaller than the total above and below grade square footage of One Cabela Drive, making One Cabela Drive slightly more than 50% larger.

<sup>36</sup> The full table of sales and adjustments can be found at Exhibit 31:60.

<sup>37</sup> The report refers to this sale as Sale #6 in the adjustments section, presumably due to an editing error. See Exhibit 31:60.

<sup>38</sup> Exhibit 31:60.

<sup>39</sup> Exhibit 31:62.

<sup>40</sup> Brandt's reports address his cost approach first in sequence, followed by his sales comparison approach. We have elected to discuss the sales comparison approach first because Brandt used the comparable sales to determine the amount of economic/functional obsolescence depreciation to apply in his cost approach.

<sup>41</sup> Exhibit 31:43-46.

of the comparables received a downward adjustment due to Time/Conditions of sale, which Brandt explained as follows: “All the sales occurred before the announcement that Cabela’s was looking for a buyer and have been the only commercial sales in the neighborhood. There has been very little activity in the commercial sector since the announcement to January 1, 2018 and a downward adjustment was made to each sale for market conditions.”<sup>42</sup> The report states that the downward adjustment was 20%, but the actual adjustment made was 25% for each sale.<sup>43</sup> Brandt also made a downward adjustment to each comparable for size, because “All the sales were significantly smaller in relationship to the subject and required downward adjustment for this item.”<sup>44</sup> Brandt concluded that the per-acre value indicated by the adjusted comparable sales was \$23,000 per acre, for a total of \$916,090 (rounded to \$916,000).

Using the Marshall Cost Manual, including all necessary adjustments for building components, Brandt determined that the total cost new of One Cabela Drive would be \$36,489,890.<sup>45</sup> Based on an effective age of 20 years and an economic life of 50 years, Brandt adjusted this total downward by 40% for physical depreciation.

Brandt made an additional downward adjustment of 62.5% for “External/Functional Obsolescence.” which he defined as follows:

Functional Obsolescence[:] The impairment of functional compacity [*sic*] of a property according to market tastes and standards.

External Obsolescence[:] An Element of depreciation a diminution in value caused by negative externalities and generally incurable on the part of the owner, landlord, or tenant.<sup>46</sup>

According to Brandt’s testimony, this depreciation for obsolescence was driven primarily by three factors. First, One Cabela Drive was an over-improvement for a community the size of Sidney, with a population around 6,757.<sup>47</sup> In Brandt’s opinion, a developer would not currently choose to build an improvement the size of One Cabela Drive in Sidney. Second, Brandt opined that the sale of Cabela’s had a chilling effect on the commercial market in Sidney. In Brandt’s words, once an announcement was made that Cabela’s was up for sale, “Time stopped in Sidney.

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<sup>42</sup> Exhibit 31:49.

<sup>43</sup> See Exhibit 31:49.

<sup>44</sup> Id.

<sup>45</sup> Exhibit 31:51.

<sup>46</sup> Exhibit 31:51.

<sup>47</sup> 2018 Reports and Opinions of the Property Tax Administrator, Cheyenne County, page 8.

Not much happened, and nothing was selling or if it did sell, it just took a long time, or was slow.” Brandt found that Sidney was a declining market for commercial development, with poor to fair expectation for future potential value increases in the neighborhood.<sup>48</sup> Brandt further testified that minimal building permits had been taken out for commercial construction in the area in the past four to five years (except for another parcel of the Subject Property, Two Cabela Drive). Third, the simultaneous availability of multiple large office buildings in a relatively small market compounds the overbuilding problem, because each office building increases the supply of available office space in the area while demand remains constant (or declines due to the wind-up of Cabela’s activities).

Brandt determined the amount of functional/economic obsolescence depreciation by calculating the total cost new less physical depreciation of the improvement component for two of the five sales used in his sales comparison approach, specifically, the two sales in Scottsbluff. On Improved Sale #1, he found a difference of 56% between the physical depreciated cost of the improvement and the sale price.<sup>49</sup> On Improved Sale #5, he found a difference of 64% between the physical depreciated cost of the improvement and the sale price.<sup>50</sup> In his report, Brandt indicated that “the two sales in metro areas in the report also support the 60% to 65% combined external/functional obsolescence,” but neither the report nor Brandt’s testimony contained any further explanation for that conclusion.

The value indicated by Brandt’s cost approach was \$8,210,225 for improvements, \$462,000 for paving, and \$916,000 for land, a total of \$9,588,225 (rounded to \$9,588,000).<sup>51</sup> Thus, Brandt’s cost approach indicated a value for One Cabela Drive of \$9,588,000 and his sales comparison approach indicated a value of \$9,593,000. He reconciled these values, giving the most consideration to the sales comparison approach. His final opinion of value for One Cabela Drive was \$9,590,000.<sup>52</sup>

The parcel of One Cabela Drive also contained, as of January 1, 2018, a 59-space RV park, which was divided into a separate parcel and sold prior to the date of the hearing. At the request

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<sup>48</sup> Exhibit 31:7. The report was amended to reflect a declining market rather than a stable market in the course of the hearing; Brandt testified that the report originally indicated a stable market due to a typographical error.

<sup>49</sup> Exhibit 31:53.

<sup>50</sup> Exhibit 31:57.

<sup>51</sup> Exhibit 31:51.

<sup>52</sup> Exhibit 31:63.



of Cabela's, this portion of One Cabela Drive was not included in Brandt's appraisal. The parties stipulated that the actual value of the RV park was \$608,158 for tax year 2018. Accordingly, the total value of One Cabela Drive proposed by Cabela's is \$10,198,158.

The County Board called two witnesses to respond to Brandt's testimony and report. Mark Stanard is a certified general real estate appraiser who has worked in the field since 1998. He is employed by Stanard Appraisal, which is contracted to assist the County Assessor in conducting commercial appraisals. He personally inspected One Cabela Drive during a countywide mass reappraisal of commercial property in 2019, but he did not complete a fee appraisal of any parcel of the Subject Property at any time. Stanard expressed the opinion that the obsolescence depreciation applied by Brandt was too high. He further testified that he would not have made such "aggressive" adjustments to comparable properties as those made by Brandt, but he did not explain which specific adjustments he disagreed with or the reasons for his disagreement.

Melody Keller is the Cheyenne County Assessor; she has held this position since January 3, 2019. Prior to serving as County Assessor, she worked in the County Assessor's office beginning in 2011. She holds the state assessor's certificate, but she is not a certified appraiser. She noted that the Reports and Opinions indicated that commercial values had continued to increase in Cheyenne County, by slightly less than one percent from 2016 to 2017,<sup>53</sup> and by 1/2 percent from 2017 to 2018.<sup>54</sup>

Keller also raised the subject of the parties' disagreements about the exact dimensions of the improvements on the parcels of the Subject Property. The evidence produced at the hearing demonstrated that these disagreements resulted from differences in how the dimensions were calculated. The County Assessor made use of measurements taken in the field, whereas Brandt made use of the buildings' blueprints to determine the square footage. Brandt explained that he preferred to rely on blueprints because, given the size of the buildings (and the irregular shape of Two Cabela Drive), a minor error in manual measurement would create significant inaccuracy in the result.

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<sup>53</sup> 2017 Reports and Opinions of the Property Tax Administrator, Cheyenne County, page 11.

<sup>54</sup> 2018 Reports and Opinions of the Property Tax Administrator, Cheyenne County, page 12.

### Two Cabela Drive

Brandt determined that Two Cabela Drive had an effective age of 5 years, a condition rating of average, a quality rating of Class A (average to good with emphasis toward average), and good maintenance.<sup>55</sup> He calculated the amount of parking area at 193,000 square feet.<sup>56</sup> He determined that the square footage of the building was 160,000 ±, with vestibules of 1,843 square feet ±. Brandt noted that the parcel includes a covered walkway that was not considered for appraisal purposes.<sup>57</sup>

Brandt determined that, if the land were vacant, development of the site for commercial use would not be financially feasible due to market instability and lack of demand for commercial development, and the maximally productive use would be for it to remain vacant.<sup>58</sup> However, since the improvements already exist, and the land value does not exceed the total value of the property as improved, the highest and best use as improved is as an office building.<sup>59</sup>

For his sales comparison approach, Brandt used four of the same five sales that he used for One Cabela Drive. He excluded Improved Sale #5,<sup>60</sup> which included both office and warehouse space, unlike Two Cabela Drive. As before, Brandt applied a downward adjustment of 20% to Sale #1 and Sale #3 because those sales had not been affected by the very slow real estate market, and a small upward adjustment to Sale #2 and Sale #4 due to high vacancy rates. Brandt made additional adjustments for location, size, condition, quality, and age, ultimately concluding that the sales comparison approach indicated a market value for Two Cabela Drive of \$52.50 per square foot, a total of \$8,400,000.<sup>61</sup>

For his cost approach, Brandt employed the same four land sales that he used for One Cabela Drive. However, he made different adjustments to those sales, which are not clearly explained in either his testimony or in the report itself. For example, when appraising One Cabela Drive, Brandt made a 25% downward adjustment to each land sale due to market conditions, despite the fact that his report indicated a 20% adjustment.<sup>62</sup> When appraising Two Cabela Drive, the actual

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<sup>55</sup> Exhibit 32:22.

<sup>56</sup> Exhibit 32:23.

<sup>57</sup> Exhibit 32:23.

<sup>58</sup> Exhibit 32:39.

<sup>59</sup> Id.

<sup>60</sup> Exhibit 31:57

<sup>61</sup> Exhibit 32:62.

<sup>62</sup> Exhibit 31:49.

adjustment made was 20%.<sup>63</sup> Additionally, when appraising One Cabela Drive, Brandt made adjustments of +\$6,000, +\$6,000, -\$11,500, and +\$6,000, respectively, due to location.<sup>64</sup> When appraising Two Cabela Drive, Brandt made adjustments of +\$4,000, +\$4,000, -\$13,500, and +\$4,000, respectively, despite the fact that Two Cabela Drive is located directly adjacent to One Cabela Drive and the same comparable parcels were used. Brandt concluded that the cost of the land component of Two Cabela Drive \$22,000 per acre, which resulted in a total land valuation of \$25,680 (rounded to \$626,000).<sup>65</sup>

Using the Marshall Cost Manual, including all necessary adjustments for building components, Brandt determined that the total cost new of Two Cabela Drive would be \$24,144,000.<sup>66</sup> Based on an effective age of 5 years and an economic life of 50 years, Brandt adjusted this total downward by 10% for physical depreciation. Brandt then made the same downward adjustment of 62.5% described above for economic/functional obsolescence.

The value indicated by Brandt's cost approach was \$8,148,600 for improvements, \$386,000 for paving, and \$626,000 for land, a total of \$9,161,600 (rounded to 9,161,000).<sup>67</sup> Thus, Brandt's cost approach indicated a value for Two Cabela Drive of \$9,161,000 and his sales comparison approach indicated a value of \$8,400,000. He reconciled these values, giving the most consideration to the sales comparison approach. His final opinion of value for Two Cabela Drive was \$8,750,000.<sup>68</sup>

Keller was again called by the County Board. She testified that Two Cabela Drive included a solid wall porch of 3,115 square feet; the County Assessor valued this porch at \$121,920.<sup>69</sup> This is the same improvement described by Brandt as a covered walkway, which he did not include in his appraisal because a future buyer might not purchase both buildings, and thus, might not want a walkway between them. Keller also stated that, based on physical measurements, the square footage of Two Cabela Drive was 171,972, a total which did not include either the walkway or

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<sup>63</sup> Exhibit 32:50.

<sup>64</sup> Exhibit 31:49.

<sup>65</sup> Exhibit 32:51; compare with \$23,000 per acre for One Cabela Drive (Exhibit 31:50).

<sup>66</sup> Exhibit 32:52.

<sup>67</sup> Id.

<sup>68</sup> Exhibit 32:63.

<sup>69</sup> Exhibit 17:118.

two additional porches with roofs.<sup>70</sup> Keller opined that the building could be purchased by a buyer who intended to lease out office space, for a large corporate office building, or for a convention center. She indicated that the assessment of Two Cabela Drive included only physical depreciation because the county was experiencing economic growth; she testified that new hotels, a travel center, and an automotive care facility had been built recently, some after the Cabela's announcement.

### 638 Illinois Street

As noted above, 638 Illinois Street is a combination office/warehouse building located off the main Cabela's campus and closer to the city center of Sidney.<sup>71</sup> Brandt determined that 638 Illinois Street had an effective age of 1997 to 2002<sup>72</sup> (subsequently listed as 18),<sup>73</sup> a condition rating of average, a quality rating of average, and average maintenance.<sup>74</sup> He determined that the office area of the building was 59,133 ± square feet and the warehouse area was 12,804 ± square feet, a total of 71,937 ± square feet.<sup>75</sup> He calculated the amount of parking area at 96,300 ± square feet.<sup>76</sup>

Brandt determined that, if the land were vacant, development of the site for commercial use would not be financially feasible due to market instability and lack of demand for commercial development, and the maximally productive use would be for it to remain vacant.<sup>77</sup> However, since the improvements already exist, and the land value does not exceed the total value of the property as improved, the highest and best use as improved is as an office building.<sup>78</sup>

Brandt used the sales comparison approach to value in completing his appraisal. No comparable sales had occurred in Sidney or Cheyenne County, but he identified sales of five comparable properties in other markets.<sup>79</sup> Improved Sales #1 and #5 are the same as for the previous parcels; Improved Sale #4 is the same as Improved Sale #3 for the previous parcels;

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<sup>70</sup> Based on the Assessor's sketch, it appears that the major entrances to the building each include an enclosed porch and an open porch. See Exhibit 17:119. It also appears that Brandt described these improvements as "vestibules" and valued the enclosed portions at \$115,200 (Exhibit 32:52), an amount far greater than the County Assessor's \$19,750 (Exhibit 17:118).

<sup>71</sup> See Exhibit 35:7.

<sup>72</sup> Exhibit 35:21. As explored at greater length in Keller's testimony on this parcel, the original building was built in 1978, and an addition was built in 2007.

<sup>73</sup> Exhibit 35:36.

<sup>74</sup> Exhibit 35:21.

<sup>75</sup> Id.

<sup>76</sup> Exhibit 35:46.

<sup>77</sup> Exhibit 35:33.

<sup>78</sup> Id.

<sup>79</sup> See Exhibit 35:48-52.

Improved Sales #2 and #3 are both new for this analysis, and both are located in Scottsbluff, Nebraska.<sup>80</sup> The buildings sold were all office or office/warehouse combinations, built between 1999 and 2007, in average, good, or average-to-good condition, and ranging from 8,286 square feet to 178,566 square feet.<sup>81</sup> These buildings had per-square-foot sales prices of \$60.20 (#1), \$52.81 (#2), \$44.71 (#3), \$73.52 (#4), and \$26.18 (#5).<sup>82</sup> Brandt found that all of the sales were “not affected by the very slow real estate market and required a downward adjustment for market conditions,” and applied a downward adjustment of 20% to all of the sales for market conditions.<sup>83</sup> Brandt made additional adjustments for location, size, condition, quality, and age, ultimately concluding that the sales comparison approach indicated a market value for 638 Illinois Street of \$26.00 per square foot, a total of \$1,870,362 (rounded to 1,870,000).<sup>84</sup>

To calculate the land value used in his cost approach, Brandt identified four vacant parcels with similar qualities to the land component of 638 Illinois Street. All these parcels were in Sidney. Brandt applied adjustments to the per-acre price of these comparable lots for Time/Condition of Sale/Market Conditions, Location, Size, and Site Prep[aration]. Each of the comparables received a 20% downward adjustment due to market conditions in Sidney, although this was partially offset for Sale #3 because it had sold below market value, based on Brandt’s personal knowledge.<sup>85</sup> Brandt determined that adjustments for size and location were not necessary for these sales; he made slight adjustments for topography (Sale #4) and zoning (Sale #3). Brandt concluded that the per-acre value indicated by the adjusted comparable sales was \$1.25 per square foot, for a total of \$216,711, rounded to \$217,000.<sup>86</sup>

Using the Marshall Cost Manual, including all necessary adjustments for building components, Brandt determined that the total cost new of 638 Illinois Street would be \$6,043,539.<sup>87</sup> Based on an effective age of 18 years and an economic life of 50 years, Brandt adjusted this total downward by 36% for physical depreciation. Brandt then made a downward adjustment of 60% for economic/functional obsolescence. The 60% figure was based on a cost analysis of three of the sales described above. On Improved Sale #1, he found a difference of

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<sup>80</sup> Compare Exhibit 35:54 with Exhibit 31:59.

<sup>81</sup> Exhibit 35:48-52.

<sup>82</sup> The full table of sales and adjustments can be found at Exhibit 35:55.

<sup>83</sup> Exhibit 35:55.

<sup>84</sup> Exhibit 35:56.

<sup>85</sup> Exhibit 35:44.

<sup>86</sup> Exhibit 35:45.

<sup>87</sup> Exhibit 35:46.

56% between the physical depreciated cost of the improvement and the sale price.<sup>88</sup> On Improved Sale #2, he found a difference of 50.4% between the physical depreciated cost of the improvement and the sale price.<sup>89</sup> On Improved Sale #5, he found a difference of 64% between the physical depreciated cost of the improvement and the sale price.<sup>90</sup>

The value indicated by Brandt's cost approach was \$1,547,134 for improvements, \$144,450 for paving, and \$217,000 for land, a total of \$1,908,584 (rounded to \$1,909,000).<sup>91</sup> Thus, Brandt's cost approach indicated a value for 638 Illinois Street of \$1,909,000 and his sales comparison approach indicated a value of \$1,870,000. He reconciled these values, giving the most consideration to the sales comparison approach. His final opinion of value for 638 Illinois Street was \$1,890,000.<sup>92</sup>

The County Board again called Keller to provide testimony on its valuation of 638 Illinois Street. Some of Keller's testimony was oriented toward demonstrating that Sidney continues to experience economic growth; specifically, she testified that a former Cabela's building (not part of the Subject Property) had been purchased by Verizon, which was taking out building permits to renovate the building. She testified that she believed that the comparable properties selected by Brandt for his sales comparison approach were much larger than 638 Illinois Street. She also testified that she believed that adjustments to comparable sales should be made by percentage rather than dollar amount.

### **C. Discussion & Analysis**

The central issue for our analysis is whether application of depreciation for functional and economic obsolescence in the cost approach, and application of downward adjustments due to market conditions in Sidney in the sales comparison approach, are appropriate in determining the value of the Subject Property. We conclude that these adjustments are appropriate.

As noted above, our analysis begins with a presumption that the County Board has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action.<sup>93</sup> That presumption remains until there is competent evidence to the

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<sup>88</sup> Exhibit 35:48.

<sup>89</sup> Exhibit 35:49.

<sup>90</sup> Exhibit 35:52.

<sup>91</sup> Id.

<sup>92</sup> Exhibit 35:57.

<sup>93</sup> *Brenner* at 283, 811.

contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary.<sup>94</sup> It is well established under Nebraska law that, when an independent appraiser using professionally approved methods of mass appraisal certifies that an appraisal was performed according to professional standards, the appraisal is considered competent evidence to rebut the presumption in favor of the County Board.<sup>95</sup> Brandt's appraisal reports conform to those requirements, and we find that the presumption in favor of the County Board has been rebutted.

Once the presumption has been rebutted, the reasonableness of the valuation fixed by the board of equalization is a question of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board,<sup>96</sup> and proof that the valuation was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>97</sup> A decision is unreasonable if the evidence presented leaves no room for differences of opinion among reasonable minds.<sup>98</sup>

The County Board's assertion that the sale of Cabela's does not affect the value of the Subject Property is implausible. An employer representing *42% of total employment in Sidney* has shut down most of its operations, with most of its employees discharged or relocated to another state. All three of the buildings under consideration were owned and previously occupied by Cabela's, and Cabela's built the largest of the two buildings as office space for its employees, part of a planned campus that included not only commercial development, but a residential community and supporting amenities.

The sale of Cabela's affects the value of the Subject Property in two ways. First, and most substantially, it results in a massive over-supply of available office space in a community that is too small to absorb it. As noted in Brandt's Highest and Best Use analyses, none of these buildings would be built by developers in the current market because there is not enough demand for even one of them. Standing alone, the 301,272 square foot improvement of One Cabela Drive is an over-improvement. The same is true of the 171,972 square foot improvement of Two Cabela Drive, and true again of the 71,937 square foot improvement of 638 Illinois Street. The

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<sup>94</sup> *Id.*

<sup>95</sup> *JHQ La Vista Conference Center Development LLC v. Sarpy County Bd. of Equal.*, 285 Neb. 120, 825 N.W.2d 447 (2013).

<sup>96</sup> *Id.*

<sup>97</sup> *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>98</sup> *Pitman v. Sarpy County Bd. of Equal.*, 258 Neb. 390, 603 N.W.2d 447 (1999); 442 Neb. Admin. Code, Ch. 2 § 001.59 (2011).

economic and functional obsolescence any one of the three buildings would face in the market is significantly compounded by the fact that all three buildings are available simultaneously.

Second, the departure of Cabela's creates economic uncertainty and reduces the demand for commercial property in the market area. The County Board used the 2017 and 2018 Reports and Opinions of the Property Tax Administrator as evidence that the commercial market in Cheyenne County was expanding, not contracting. Because review of the Reports and Opinions is one of our primary statutory duties,<sup>99</sup> we wish to clarify this point. The information on commercial property contained in the Reports and Opinions represents a specific study period; for commercial property, this is "a 3-year period between October 1 and September 30. This three-year period ends the year prior to the assessment year for which values are established."<sup>100</sup> The relevant three-year study period for tax year 2018 ran from October 1, 2014, through September 30, 2017. According to the testimony of Jeffrey Ellwanger, the Cabela's sale was publicly announced on September 25, 2017. Thus, the impact of the announcement would only be evident in sales that took place between September 25 and September 30 of 2017 for the 2018 Reports and Opinions. The impact of the sale would not be reflected at all in the 2017 Reports and Opinions, because the relevant study period ended in 2016. For tax year 2019, when the data includes two years of sales before the announcement and one year after, the Reports and Opinions indicate a negative 7.22% commercial value change.<sup>101</sup>

The County Board asserted that Brandt's appraisals were unpersuasive because Brandt did not perform an analysis using the income approach, which determines the value of real property by dividing the net operating income by a market-derived capitalization rate.<sup>102</sup> Brandt considered use of the income approach inappropriate for the Subject Property due to the lack of local comparable rental properties, the lease-up time required to fill such large buildings with tenants, and the high per-square-foot cost of maintaining the building; these factors would create uncertainty in determining both operating expenses and the appropriate capitalization rate. The Nebraska Court of Appeals has held that Neb. Rev. Stat. § 77-112 does not require use of all of the specified factors (i.e., the three approaches to value), but rather requires use of applicable

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<sup>99</sup> See Neb. Rev. Stat. § 77-5027 (Reissue 2018).

<sup>100</sup> 350 Neb. Admin. Code, Ch. 17 § 003.05 (2017).

<sup>101</sup> 2019 Reports and Opinions of the Property Tax Administrator, Cheyenne County, page 13.

<sup>102</sup> See Appraisal Institute, *The Appraisal of Real Property* 439-462 (14th ed. 2013) for an overview of the income approach to value.



statutory factors, individually or in combination, to determine actual value of real estate for tax purposes.<sup>103</sup> Furthermore, there is no evidence that the County Board used an income approach to value the Subject Property, and although its exhibits contain pages marked as comparable sales, the County Board offered no testimony on the details of its sales comparison approach, if one was performed.

We acknowledge that Brandt's appraisals do not answer every question about the value of the Subject Property beyond a shadow of a doubt. The market conditions create too much uncertainty for that. Nebraska courts have recognized that actual value is largely a matter of opinion and without a precise yardstick for determination with complete accuracy.<sup>104</sup> In a recent opinion, the Nebraska Supreme Court found that, where the evidence established that the determination of a county board was unreasonable, the Commission did not err in relying upon an appraisal that met the established standards.<sup>105</sup> Questions such as whether blueprints provide more accurate measurements than on-site physical measurement, or whether a covered walkway between separately marketed buildings adds value, are reasonable subjects for determination by expert opinion. Brandt is an experienced, professional appraiser. He developed his opinions of value in conformity with recognized professional standards, based on verifiable statistical data. Accordingly, we find that the record as a whole constitutes clear and convincing evidence that the determinations of the County Board were arbitrary or unreasonable, and we further find that Brandt's appraisals constitute clear and convincing evidence of the actual value of the Subject Property.

#### IV. CONCLUSION

The Commission finds that there is competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determinations. The Commission also finds that there is clear and convincing evidence that the County Board's decisions were arbitrary or unreasonable.

For all the reasons set forth above, the decisions of the County Board should be vacated and reversed.

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<sup>103</sup> *Schmidt v. Thayer County Bd. of Equal.*, 10 Neb.App. 1, 624 N.W.2d 575 (1999).

<sup>104</sup> *Firethorn Inv. v. Lancaster County Bd. of Equal.* 261 Neb. 231, 622 N.W.2d 605 (2001).

<sup>105</sup> *Wheatland Indus. v. Perkins County Bd. of Equal.*, 304 Neb. 638, \_\_\_ N.W.2d \_\_\_ (2019).

**V. ORDER**

IT IS ORDERED THAT:

1. The decisions of the Cheyenne County Board of Equalization determining the taxable value of the Subject Property for tax year 2018 are vacated and reversed.<sup>106</sup>

2. The taxable value of the Subject Property for tax year 2018 is:

**18C 0153:** \$10,198,158

**18C 0154:** \$8,750,000

**18C 0159:** \$1,890,000

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Cheyenne County Treasurer and the Cheyenne County Assessor, pursuant to Neb. Rev. Stat. § 77-5018 (Reissue 2018).

4. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.

5. Each party is to bear its own costs in this proceeding.

6. This Decision and Order shall only be applicable to tax year 2018.

7. This Decision and Order is effective for purposes of appeal on June 2, 2021.<sup>107</sup>

Signed and Sealed: June 2, 2021

SEAL

\_\_\_\_\_  
Robert W. Hotz, Commissioner

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James D. Kuhn, Commissioner

<sup>106</sup> Taxable value, as determined by the County Board, was based upon the evidence at the time of the Protest proceeding. At the appeal hearing before the Commission, both parties were permitted to submit evidence that may not have been considered by the County Board of Equalization at the protest proceeding.

<sup>107</sup> Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. § 77-5019 (Reissue 2018) and other provisions of Nebraska Statutes and Court Rules.